



# WISCONSIN LEGISLATURE

P.O. Box 7882 Madison, WI 53707-7882

November 19, 2007

Mr. Kevin Martin  
Chairman, Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Room 8-B201  
Washington, DC 20554

## **RE: Fair Access to Network (FAN) Legislation**

Dear Chairman Martin:

It is our understanding that the Federal Communications Commission (FCC) has opened a rulemaking proceeding (MB Docket 07-42) to investigate the issue of channel carriage between cable operators and independent channel programmers.

We applaud your decision to take up this issue. As we are sure you are aware, our constituents in Wisconsin have found themselves in the unfortunate circumstance of being unable to access programming they want because of a dispute between the large cable companies and independent NFL and Big Ten Networks. And there in lies the problem with the current situation: The interests of the fans are left out of the discussion. They are an afterthought in a process that to this point appears to be without resolution. And while at some point true competition might resolve issues such as this, at present that environment does not exist.

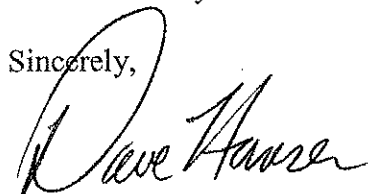
As you can imagine, Wisconsinites want a solution that will allow them to have access to Green Bay Packers and Wisconsin Badgers programming. To help facilitate an equitable solution, we have drafted legislation known as "Fair Access to Networks" or FAN. FAN sets up a dispute resolution mechanism that will allow an independent arbiter to select between the competing proposals for carriage when an independent programmer and cable provider are unable to come to an agreement.

FAN does not attempt to choose sides in the dispute between cable and independent programmers. We simply believe that the market power of the large cable companies necessitates government regulation to ensure that consumers are being properly protected.

We've attached a copy of our legislation, which is currently being circulated for co-sponsorship. We've also attached a press release on the subject and a sample of the media coverage in Wisconsin on this issue.

Thank you for reviewing these matters.

Sincerely,



**Senator Dave Hansen**



**Representative Kitty Rhoades**

Enclosures

CC: Commissioner Michael Copps  
Commissioner Jonathan Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert McDowell



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-3616 2  
RPN:bk:wn

2007 BILL

- 1     **AN ACT** *to create* 788.30 of the statutes; **relating to:** arbitration in situations  
2             involving cable and satellite television system operators and creators of video  
3             programming.

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***Analysis by the Legislative Reference Bureau***

This bill allows a person who creates video programming for cable or satellite television systems (video programmer) to seek arbitration if that video programmer believes that a cable or satellite television system operator has not treated the video programmer in a fair, reasonable, and nondiscriminatory manner concerning the proposed amount to be paid for the addition or renewal of a video channel to the cable or satellite operator's television system. The video programmer must give the cable or satellite television system operator notice of the intent to seek arbitration. If the parties do not resolve the dispute within 10 days after the notice is sent, either party may file a written request for arbitration with the American Arbitration Association. The requesting party must submit their final offer regarding the addition or renewal of a video channel to the arbitrator chosen by the association. If the other party does not submit a final offer, in response to a notice of arbitration, the arbitrator may only consider information provided by the party requesting arbitration when making his or her decision.

The arbitrator may require the parties to submit additional evidence, but he or she may not share the evidence submitted by one party with the opposing party. The arbitrator may not review any offers made by the parties other than their submitted final offers. The arbitrator must choose the proposed amount to be paid by the cable

**BILL**

or satellite television system operator for the addition or renewal of the disputed video channel that most closely approximates the fair market value of that disputed video channel. In addition, the arbitrator must choose the remaining terms and conditions of the final offer of the party that submitted the request for arbitration.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1       **SECTION 1.** 788.30 of the statutes is created to read:

2       **788.30 Arbitration regarding television system operators.** (1) In this  
3 section:

4       (a) "Final offer" means a proposed contract for the addition or renewal, for not  
5 less than 3 years, on a multichannel video programming distributor's television  
6 system, of a video channel owned by a video programmer.

7       (b) "Multichannel video programming distributor" has the meaning given in 47  
8 USC 13, and includes cable and satellite television system operators.

9       (c) "Programming category" means programming that predominantly contains  
10 only one of the following types of content:

- 11       1. Sports.
- 12       2. News and public affairs.
- 13       3. Music videos.
- 14       4. Consumer purchasing.
- 15       5. Religious.
- 16       6. Pay-per-view.
- 17       7. Entertainment, other than those listed in subds. 1. to 6.

18       (d) "Video programmer" means a person engaged in the production, creation,  
19 or wholesale distribution of video programming who is not affiliated with a  
20 multichannel video programming distributor and who offers a video channel that

**BILL**

1 competes in the same programming category as a video channel owned by a  
2 multichannel video programming distributor.

3 (2) (a) If a video programmer believes that a multichannel video programming  
4 distributor has not treated the video programmer in a fair, reasonable, and  
5 nondiscriminatory manner concerning the amount proposed to be paid by the  
6 multichannel video programming distributor for the addition or renewal of a video  
7 channel that is owned by the video programmer, the video programmer may request  
8 arbitration regarding that treatment. The video programmer shall submit a written  
9 notice to the multichannel video programming distributor within 90 days after the  
10 most recent alleged unfair, unreasonable, or discriminatory treatment that the video  
11 programmer will request arbitration.

12 (b) If a dispute between a multichannel video programming distributor and a  
13 video programmer is not resolved within 10 days after submission of the notice under  
14 par. (a), either party may file a written request for arbitration with the American  
15 Arbitration Association. The party making the request shall include a copy of that  
16 party's final offer. The association shall notify the other party in writing of the  
17 demand for arbitration, provide that party with a copy of the submitted final offer,  
18 and inform that party that they must provide the association with that party's final  
19 offer within 5 days of receipt of the notice. If there is no final offer submitted in  
20 response to the notice of arbitration within the 5-day period, the arbitrator shall  
21 consider only the information provided by the party who made the request for  
22 arbitration when making his or her decision.

23 (c) The arbitration shall be decided by one arbitrator chosen as provided by the  
24 American Arbitration Association, following expedited commercial arbitration  
25 procedures.

**BILL****SECTION 1**

1           (d) The arbitrator may require the parties to submit relevant evidence that is  
2           in their possession or control, but the arbitrator may not share that evidence with  
3           the opposing party. To determine the fair market value of the addition or renewal  
4           of the disputed video channel, the arbitrator shall consider any relevant evidence,  
5           including all of the following:

6           1. Current or previous contracts between the video programmer and other  
7           multichannel video programming distributors.

8           2. Offers made between the video programmer and other multichannel video  
9           programming distributors.

10          3. Current or previous contracts for the disputed video channel with other  
11          multichannel video programming distributors.

12          4. Price, terms, and conditions that the video programmer has with other  
13          multichannel video programming distributors for carrying the video programmer's  
14          channels.

15          5. Rating, advertising rates, and other indicators of the relative value of the  
16          disputed video channel.

17          6. The extent of the national carriage of the video programmer's channels.

18          7. Whether the multichannel video programming distributor and the video  
19          programmer have pursued, in the past 5 years, the same programming categories  
20          from 3rd parties.

21          8. Other evidence of the value of the disputed video channel.

22           (e) The arbitrator may not consider any offers that were made prior to the final  
23           offers submitted to the arbitrator.

24           (f) The arbitrator shall choose the proposed amount to be paid by the  
25           multichannel video programming distributor for the addition or renewal of the

**BILL**

1     disputed video channel that most closely approximates the fair market value of the  
2     addition or renewal of the disputed video channel. The arbitrator shall accept the  
3     remaining terms, conditions, and form of the final offer of the party that filed the  
4     written request for arbitration.

5           (3) If the arbitrator determines that a party's conduct during the course of the  
6     arbitration was unreasonable, the arbitrator may require that party to pay all or  
7     some of the other party's costs and expenses, including reasonable attorney fees.

8           (4) The award of the arbitrator may be confirmed as provided in s. 788.09 by  
9     the circuit court of a county in which the multichannel video programming  
10    distributor conducts business.

11                           (END)



# WISCONSIN LEGISLATURE

P.O. Box 7882 Madison, WI 53707-7882

For Immediate Release  
October 30, 2007

Contact: Senator Hansen  
(608) 266-5670  
Representative Rhoades  
(608) 266-1526

## **Sen. Hansen and Rep. Rhoades to Introduce "Fair Access to Networks" (FAN) Legislation**

*Legislation will establish arbitration process to resolve dispute between cable companies and sports networks*

Madison – Focused on finding a solution to the current dispute between cable companies and independent sports networks, like the NFL Network and the Big Ten network, State Senator Dave Hansen (D-Green Bay) and State Representative Kitty Rhoades (Hudson) announced their intention to introduce their "Fair Access to Networks" (FAN) legislation.

Specifically, the FAN legislation will establish a dispute resolution system to allow an independent arbiter to select between the competing proposals for carriage.

"There is no reason that all Wisconsin fans should not be able to see the Wisconsin-Ohio State game or the Packers-Cowboys game in November. While the cable companies and the sports networks continue their dispute, Wisconsin's sports fans continue to lose," said Hansen. "By setting up a fair and neutral arbitration system, we can put an end to this fight and give consumers access to the networks they want."

Nationwide, cable companies have been unable to reach a solution that will allow their subscribers access to popular sports programming. While satellite and other television providers have added the NFL Network and Big Ten network to their standard package without a rate increase, cable companies have contested that cable subscribers should be made to pay additional charges to view games carried on these networks.

"Millions of sports fans in Wisconsin are on the short end of a fight they didn't ask for, and no one is in their corner," said Rhoades. "We're not picking sides between the cable companies and the sports networks. We are simply establishing a fair way to end these disputes so that our constituents are no longer shut out of programming they should have access to."

As it currently stands, cable-subscribing football fans living outside the Green Bay and Milwaukee media markets will not be able to watch the Packers play the Dallas Cowboys on November 29<sup>th</sup> unless of course they subscribe to AT&T, DirecTV, Dish Network or a similar provider that has reached agreements with the NFL Network. That



key game between the NFC's two best teams, along with football 24.7 programming 365 days a year, is being shown on NFL Network. The same is true for fans that will not be able to see the Badgers play Ohio State this weekend, as well as a number of this season's men's and women's basketball games, unless an agreement is reached.

"Love of the Packers and Badgers is a common bond that unites our diverse state and brings families and friends together," said Hansen. "I wish this legislation wasn't needed, but it is time for the fans to have a voice in this dispute."

Hansen and Rhoades will soon be circulating the FAN Act in their respective houses for co-sponsorship.

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1. The Capital Times, Judith Davidoff: Bipartisan bill aimed at blackouts on Badger, Packer games, 10/30/07
2. Milwaukee Journal Sentinel: AP, Scott Bauer: Legislators, fans team up over cable games, 10/30/07
3. WISCTV, Channel 3000: Cable Competition Bill Heads To Joint Finance Committee, 10/30/07
4. The Badger Herald, Tom Schalmo: Legislator calling for TV arbitration, 10/31/07
5. La Crosse Tribune: AP, Scott Bauer: Lawmakers propose solution to get Big Ten, NFL networks on cable, 10/30/07

## **THE CAPITAL TIMES**

### **Bipartisan bill aimed at blackouts on Badger, Packer games**

There's nothing like Wisconsin sports to unite even political rivals.

A Democratic state senator and Republican state representative from the Green Bay area are teaming up to find a solution to the blackouts on Packer and Badger games being experienced by sports fans across the state.

"There is no reason that all Wisconsin fans should not be able to see the Wisconsin-Ohio State game or the Packers-Cowboys game in November," Sen. Dave Hansen, D-Green Bay, said in a news release.

Hansen and Rep. Kitty Rhoades, R-Hudson, say their bill would establish a dispute resolution system to resolve the current dispute between cable companies and such independent sports networks as the NFL Network and the Big Ten Network.

"Love of the Packers and Badgers is a common bond that unites our diverse state and brings families and friends together," Hansen said. "I wish this legislation wasn't needed, but it is time for the fans to have a voice in this dispute."

Jay Wadd, Hansen's chief of staff, said the bill would soon be circulated for co-sponsors.

"I have a feeling this is going to be a popular bill," Wadd said.

This weekend's University of Wisconsin football game against top-ranked Ohio State will be televised only on the Big Ten Network and not offered through Charter Communications, the region's largest cable operator. BTN is available, however, on 15 smaller cable systems in Wisconsin, including the Mount Horeb Telephone Co., and on satellite services DirecTV and Dish Network.

Judith Davidoff · 10/30/2007 3:15 pm



## **Legislators, fans team up over cable games**

AP News Wire

**Madison** - Finally a bill that's uniting not only Packers and Badgers fans, but also Republicans and Democrats.

The common enemy?

Cable companies and sports networks.

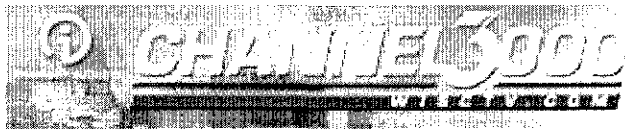
The bill announced Tuesday is intended to make the Big Ten Network and the NFL Network available on more cable networks across Wisconsin.

Most Wisconsin cable subscribers won't be able to watch two big upcoming games. Wisconsin's game against No. 1 Ohio State this Saturday is on the Big Ten Network, while Green Bay's contest against the Dallas Cowboys on Nov. 29 will be on the NFL Network.

Currently, those networks are available only on satellite systems or small cable companies. Time Warner and Charter Communications, the two largest cable providers in Wisconsin, have not reached deals with the networks to carry their programming.

The biggest hang-up has been over whether to offer the channel as part of the basic tier or a more expensive special sports tier.

The bill, to be introduced by Sen. Dave Hansen (D-Green Bay) and Rep. Kitty Rhoades (R-Hudson), was being circulated to get co-sponsors. It would establish an arbitration system to settle disputes between the sports networks and cable companies.



## Cable Competition Bill Heads To Joint Finance Committee

### ***Some Want Provision To Settle Network Disputes***

UPDATED: 9:20 pm CDT October 30, 2007

**MADISON, Wis. --** A bill going to the state's Joint Finance Committee on Wednesday could change the climate for cable TV in the state.

#### **VIDEO: Watch The Report**

And with some fans upset about their cable not carrying the new Big Ten or NFL networks, there's discussion of making that happen through legislation as well.

The bipartisan cable competition bill has passed the Assembly and is scheduled to be in Joint Finance Committee Wednesday on its way back to the Senate. But recent news of more University of Wisconsin Football games being carried on the Big Ten Network have some itching for a deal between the network and cable companies.

Two big upcoming games on the networks won't be viewable to most cable subscribers across the state. Wisconsin's game against Ohio State this Saturday is on the Big Ten Network, while the Packers-Cowboys match next month will be on the NFL Network.

The cable competition bill allows phone companies to offer video service and gives franchising power to the state instead of local governments. But many sports fans are wondering whether a provision will be added to end the ongoing dispute between local cable companies like Charter and the Big Ten Network.

New Senate Majority Leader Russ Decker has said he'd like the issue to be resolved. But the bill's co-author said he'd rather see the same version of the bill passed as went through the Assembly.

"I hope we don't amend this bill, but believe me, I would love nothing more to have the Big Ten Network and the NFL Network carried, and there's a separate bill to do that," said Sen. Jeff Plale, of South Milwaukee, co-author of the cable bill.

That separate bill was announced Tuesday by Democratic Sen. Dave Hansen and Republican Rep. Kitty Rhodes. The Fair Access to Networks or "FAN" legislation would allow an independent arbiter to select between proposals and solve the network disputes.

Those disputes have kept the channels off of major cable networks serving Wisconsin. They are available on some satellite networks.

The proposal is being circulated among lawmakers to gather co-sponsors.

Plale said he's asking that the bill come through the Joint Finance Committee Wednesday with no amendments, but said an amendment about the network provision is likely to be offered once the bill comes back to the floor of the Senate.

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## **Legislator calling for TV arbitration**

### **The Badger Herald**

by Tom Schalmo

Wednesday, October 31, 2007

Two days after the Big Ten Network announced they would air the Wisconsin-Ohio State football game on Saturday, a bipartisan team of state legislators said they are trying to make such games more accessible to fans.

With the Big Ten Network unavailable on Charter Communications basic cable in Madison, many will not have access to the Badgers-Buckeyes game in their homes.

On Tuesday, Sen. Dave Hansen, D-Green Bay, and Rep. Kitty Rhoades, R-Hudson, said they will introduce the Fair Access to Networks bill that would create an arbitration process to settle negotiations between cable companies and specialty sports networks.

If a cable company, like Charter or Time Warner, cannot negotiate a deal with a sports network, an independent arbiter would be brought in to settle the issue.

"I think it's been rather bizarre, so we're trying to fix it in a bipartisan way," Hansen said.

Most cable regulation is local, according to University of Wisconsin journalism professor Robert Drechsel, but this bill would cover cable negotiations statewide.

While Hansen said he thinks the Legislature has authority to go through with such a bill, UW telecommunications professor Barry Orton said the state has "no real role" in the negotiations of two private businesses.

"They could pass a bill, but both sides are in a commercial negotiation," Orton said. "The state can't force its way into a commercial negotiation."

Still, Hansen said he had to watch last week's Badger football game at a local pub and is surprised this Saturday's game is not available to most cable users.

"I never expected a game of that importance would not be available on the big networks," Hansen said. Hansen added the matchup between Green Bay Packers and Dallas Cowboys on Nov. 29 is slated to air on the NFL Network, which Charter also does not carry. The bill would extend to the NFL Network as well.

The Big Ten Network is available on several small cable providers statewide, but negotiations between it and Charter are now at a standstill, according to representatives from both.

"I think there's blame to be placed on both sides ... but let's get this done," Hansen said, adding, "it should be about the fans."

  
**LaCrosseTribune.com**  
La Crosse, Wisconsin

**Lawmakers propose solution to get Big Ten, NFL networks on cable**

By SCOTT BAUER | The Associated Press

La Crosse Tribune

MADISON, Wis. — Finally a bill that's uniting not only Packers and Badgers fans, but Republicans and Democrats.

The common enemy?

Cable companies and sports networks.

The bill announced Tuesday is intended to make the Big Ten Network and the NFL Network available on more cable networks across Wisconsin.

Most Wisconsin cable subscribers won't be able to watch two big upcoming games. Wisconsin's game against No. 1 Ohio State this Saturday is on the Big Ten Network, while Green Bay's contest against the Dallas Cowboys on Nov. 29 will be on the NFL Network.

Currently those networks are available only on satellite systems or small cable companies. Time Warner and Charter Communications, the two largest cable providers in Wisconsin, have not reached deals with the networks to carry their programming.

The biggest hang-up has been over whether to offer the channel as part of the basic tier or a more expensive special sports tier.

The bill, sponsored by a Democrat in the Senate and a Republican in the Assembly, would establish an arbitration system to settle disputes between the sports networks and cable companies.

Seth Palansky, NFL Network spokesman in Los Angeles, said the proposal appears to be a fair solution.

"We want fans to get access to NFL Network. We know they want it," Palansky said. "If this can help that result, we're all for it."

He said 239 providers nationwide carry the NFL Network, including DirectTV, DishNetwork, a variety of cable companies and phone companies that are branching into cable services, including AT&T and Verizon.

Once there is a deal with the cable companies, games could start airing immediately, Palansky said.

"But I don't want to mislead or give anyone false hope," he said. "Unless legislation is introduced, there is zero chance that a deal can be worked out between the cable companies and ourselves."

Charter wants to carry both channels, said John Miller, a spokesman for Charter. But he said putting it on the basic tier, as the networks want, would require it to be delivered to customers who are not interested in the programming.

Miller said he hoped the networks would agree to Charter placing the channels on their sports tier.

"While a segment of customers tell us they want these networks at any cost, the majority of customers want the ability to have more choice in what programming is available to them," Miller said. "We feel that's a reasonable request."

A spokeswoman for Time Warner also did not immediately return a message.

The bill, to be introduced by Sen. Dave Hansen, D-Green Bay, and Rep. Kitty Rhoades, R-Hudson, was being

circulated to get co-sponsors. Details were not immediately released, but the lawmakers said in a statement that they weren't taking sides in the dispute. They said they were simply looking out for fans.

"I wish this legislation wasn't needed, but it is time for the fans to have a voice in this dispute," Hansen said.

Anger over not being able to watch the Badgers game on Saturday spilled over into the Senate on Tuesday — even though it wasn't taking up the bill.

"This is so frustrating," said Sen. Mike Ellis, R-Neenah. "We've got 5.5 million people who aren't going to be able to get the game."

Three previous Wisconsin games have been broadcast on the Big Ten Network, but all of those were home games against unranked opponents. Saturday's game is at Columbus and against the top-ranked team in the country.

The only way to see it is to go to Columbus and pay a scalper to get a ticket or go to a bar or a friend's house that has a satellite service such as DirectTV or Dish Network.

Basketball fans, get ready to be angry as well. About two-thirds of Wisconsin's games are scheduled to be shown only on the Big Ten Network this coming season.

Last Updated: Tuesday, October 30, 2007 5:46 PM CDT